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Development **(195$_{48}$) Department**

SERIES.

No

G.O. No. 6377

Dated 27- 12- 1948

[Despatch Abstract.]

Cooperative Societies- Land Mortgage Banks Payment of Principal in usufructuary mortgages- Delivery of possession of mortgaged property by creditors Amendment of Lnd-d Land Mortgage Banks Act- Proposals dropped- Papers Recorded.

From : Sri Rao Bahadur J.C.Ryan M.A.,
Registrar of Cooperative Societies,
Madras.

To
The Secretary to Government,
Development Department,
Fort St., George,
Madras.

No. Rc. 35343/47 J dated 14th February 48.

Sir,

Sub:- Cooperative Societies- Land Mortgage Banks Legislation proposed in the matter of compelling usufructuary mortgages to deliver possession.

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1. I submit herewith a letter from the Madras Cooperative Central Land Mortgage Banks Association requesting that action may be undertaken to amend section 29 of the Land Mortgage Banks Act X of 1934 making provision to compel usufructuary mortgages to deliver possession.

2. At the conference of the Primary Land Mortgage Banks held on 19-1-1947 the following resolution was passed.

" Resolved to request Government to amend the Land Mortgage Banks Act X of 1934 to make neeessary provision to compel a Creditor of a usufructuary mortgage debt as there is no such provision in the Act."

3. The Board of directors of the Central Land Mortgage Bank considered the subject and resolved to address Government to pass necessary legislation on the matter. In pursuance of this resolution the bank has made out a case in this behalf. The bank gathered statistics regarding the specific instances of hardship to the borrowers of primary banks on account of evasion of usufructuary mortgagees to deliver possession of the mortgages. 28 Primary Land Mortgage Banks have reported specific instances where borrowers were rendered unable to redeem such usufructuary mortgages. Out of these, the loans sanctioned by the Central Land Mortgage Bank is still pending disbursement in Attur, Koilpatti, Tellicherry, Vizagapatam, Peelamedu, Pollachi, Gobichettipalayam and Periyakulam Land Mortgage Banks. Besides delays have occurred for the disbursement of loans in the following cases.

Name of Bank	L.No.	Date of Action taken under section 29	Date of Disbursement	Delay. Y.	M.	D.
1. Kattumannar Koil Land Mortgage Bank	223	4-7-46	15-4-47	0	9	12
2. Cuddalore -do-	87	19- 5-45	25-4-46	0	11	7
3. Palni -do-	185	8-8-44	12-7-46	2	0	5
4. Erode -do-	207	19-6-45	2-4-46	0	9	15
5. Uthamaplayam -do-	246	1943	1945	2	0	0

4. In the Tinnevelly Land Mortgage Bank, the Creditors are reported to have not turned up to receive payment even after the

summons

summons by a Civil Court after depositing the loan amount in the Court. The loan account had subsequently to be closed. In some cases the borrowers are not in a position to compel the creditors. In some others, the delay is due to disputed claims by the heirs of the deceased creditor or by the Creditors refusing to receivethe amount even after they are deposted in Civil Courts. Family litigation in the case of Koilpatti Land Mortgage Bank is another reason. It is therefore evident that the Land Mortgage Banks are experien--cing difficultires in the matter of disbursement of loans to creditors of usufructuary mortgage debts.

5. Under section 29 of the Land Mortgage Banks Act, the mortgage bank may not withstanding the provisions of sections 83 and 84 of Transfer of Property Act require any person to whom any such debt is due, to receive payment of such debt or part thereof from the bank. A penalty has also been providedin this section for non-compliance of the notice by way of forfieture of interst on such debts. But the privilege given to Land Mortgage Banks under this section does not apply to mortgages with possession where interest is not due from the borrower but is appropriated from the mortgages in possession of the Creditor. An instance is given below: The Othi deeds which are one of the forms of usufructuary mortgages are executed for a fixed number of years mutuallyragreed upon by the two parties. Provision is made in the document that the Creditor shall be compelled to receive payment at the appointed date of every year. Further no interest is charged except enjoyment of the land and so a notice under section 29 will not affect the Creditor materially as there will be no loss to the Othidar. Besides, he can be forced to receive payment only in a particular period of the year. It is therefore necessary that the usuructuary mortgages should be brought on a line with simple mortgages.

6. The Creditor of a usufructuary mortgage debt is on a line with the simple mortgagee under section 60 of the Transfer of Property Act, whichgives the mortgagor the right of redemption on payment of the debt. This right of redemption is now sought to be exercised by the Primary Land Mortgage Banks on behalf of their borrowers in pursuance of the proposed amendment to the Land Mortgage Banks Act X of 1934

7. The amendment proposed is merely an attempt to fill up a lacunae in the land Mortgage Bank Act and it may be accepted by Government.

8. The provisions of the Madras Agriculturists Relief Act IV of 1938 as they stand at present, are not applicable to usufructuary mortagages. Government have under consideration a bill to amend the above Act where the sealing down of usufructuary mortgage debts is also contemplated. When this bill is enacted into law, the agriculturists, to avail of this concession, should have the benefit of forcing the Creditors to receive payment, irrespective of the terms of the usufructuary mortgage deeds. Besides, the possession of lands were not remuncrative on account of low values of Agricultural produce in prewar years. Due to high level of agricultural prices now prevailing, the ryots are desirous of redeeming their debts and the conditions of the usufructuary mortgage deed stand in the way. The need for the

above.

above amendment to the Land Mortgage Bank Act is therefore imperative.

9. I therefore request that Government may be pleased to amend the Land Mortgage Banks act on the lines indicated in the banks letter.

Sd. for Register.

/True copy/

Superintendent,
Madras Record Office.

SD/ 7-8-1953

From
Sri Rao Bahadur J.C. Ryan, M.A.,
Registrar of Cooperative
Societies, Chepauk, Madras.

To
The Secretary to Government
Development Department
Fort St. George, Madras.

Rc. 35343/47-J dated 24-8-1948.

Sir

Sub:- Co-operative Societies- Land Mortgage Banks- Payment of principal- Delivery of possession of mortgaged property- by the creditors- Legislation- proposals.

Ref: 1. My letter No.Rc. 35343/47-J dated 14-2-48
2. Government - Development Department- Memorandum No.20390-BIII/48-2 dated 30-3-1948.

I submit herewith a copy of the letter No.9013/46-47 dated 17-7-1948 of the Madras Cooperative Land Mortgage Bank being an answer of the points raised in the Government Memo cited. I agree with the views of the Bank. I request that Government may be pleased to enact the amendment to the Land Mortgage Bank Act X of 1934 suggested therein.

Sd. For Registrar.

/True copy/

Superintendent,
Madras Record Office.

SD/7-8-1953

COOPERATIVE DEPARTMENT.

From
Sri Rao Bahadur J.C.Ryan, M.A.
Registrar of Cooperative Societies,
Chepuak, Madras.

To
The Secretary to Government
Development Department,
Fort St. George, Madras.

No. R.C. 35345/47 J. Dated 13-12-1948.

Sir

Sub: Cooperative Societies- Land Mortgage Banks- Payment of Principal delivery of possession of mortgaged property by creditors- legislation.

Ref: Government (Development Department) Memo No.20399-B III/48-5 dated 29-9-1948.

I sumibt herewith a copy of letter No.9013/48-49 dated 1-12-1948 of the Central Land Mortgage Bank offering its remarks on the reference cited. In the circumstances stated therein, the matter may be dropped.

Sd. For Registrar.

/True copy/

Superintendent,
Madras Record Office.

SD/7-8-1953

Development Department.

Abstract.

Cooperative Societies - Land Mortgage Banks Payment of Principal in usufructuary mortgages- Delivery of possession of mortgaged property by creditors- Amendment of Land Mortgage Banks Act- Proposal dropped-Papers recorded.

Reference: Letters from the Registrar of Cooperative Societies No. R.C.35343/47-J, dated 14-2-1948, 24-8-48 and 13-12-1948.

Order Ms. No. 6377 dated 27-12-1948.

R E C O R D E D.

Sd. Secretary to Government,
Development Department.

To
The Registrar of Coope-
-rative Societies.

/True copy/

Superintendent,
Madras Record Office.

SD/ 7-8-1953

Development Department.

Coe-operative Societies- Land Mortgage Banks- Payment of Principal- Delivery of possession of mortgaged property by creditors- Legislation.

From the Registrar of Cooperative Society, Rc. No.35343/47 J dated 14-2-1948.

To Assistant Secretary:

Under section 29 of the Madras Cooperative ~~Lands~~ Land Mortgage Banks Act, 1934, a mortgage bank may, notwithstanding the provisions of sections 83 and 84 of the Transfer of Property Act, 1882, by notice in writing require any person to whom any debt is due, to receive payment of such debt or part thereof, from the bank at its registered office within such period as may be specified in the notice. If any such person fails to receive such notice or such payment, such debt or part thereof, as the case may be, will cease to carry interest from the expiration of the period specified in the notice. The Madras Co-operative Control Mortgage Bank has represented that this provision is not helpful in the case of usufructuary mortgages or mortgages with possession, as there is no stipulation in such cases for payment of interest and the creditors concerned enjoy the rents and profits accruing from the mortgaged properties in lieu of interest. The Bank has therefore proposed that nedessary provision be included in the Land Mortgage Banks Act to compel usufructuary mortgagees to deliver possession of the mortgaged properties to the mortgagors on payment of the money due under such mortgages. The Registrar of Cooperative Socieites has supported the proposal.

2. The Cooperative Land Mortgage Bank states ~~xxx~~ that where a time limit has been fixed for the redemption of mortgages, it may not be p rmissible to compel creditors to receive payment without the Transfer of Property Act being suitably amended. But it is stated that there are instances where even after the period fixed for redemption is over or where no period is fixed, the mortgagees retain possession and evade the receipt of notices or payments. The Registrar has reported some cases where the disbursement of loans by Land Mortgage Banks was inordinately delayed on this account. The Registrar states that the amendment proposed by the Cooperative Land Mortgage Bank is intended to fill up a lacunae in the Act, in order to enable the Land Mortgage Banks to exercise the right of redemption on behalf of their borrowers and that the amendment is very necessary in view of the proposal to amend the Madras Agriculturists Relief Act, 1938, so as to make its scaling down provisions applicable to usufructuary mortgages. In the circumstances explained, the necessity for the amendment proposed may be accepted.

3. The new section 29-B proposed by the Cooperative Land Mortgage Bank provides that in the even of non-compliance by a usufructuary mortgage with the notice to deliver possession of the mortgaged property tomortgagor within the specified time, the Registrar of Cooperative Societies may, at the instance of a member of a Land mortgage bank and after hearing objections, if any, direct the mortgagor to be put in possession and that the

Registrar's order may be executed as if it were a decree of the Civil Court having jurisdiction over the subject matter. The existing section 29 provides only for forfeiture of interest for failure by the creditor to receive payment of the debt and this is analogous to the provision already contained in section 84 of the Transfer of Property Act. The effect of this section in the case of mortgages with possession is said to be that the mortgagee will be liable to the mortgagor from the date of service of notice of deposit in the court for mesne profits from the mortgaged property. It is for consideration whether, instead of the amendment proposed by the Cooperative Land Bank Mortgage a specific provision as at 'A' above may be included in the existing section 29. This would be more in keeping with the provisions of the Transfer of Property Act than the new section 29-B suggested by the Cooperative Land Bank. For orders.

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Z

4. The case may be sent to Home and Legal for remarks.

Sd. *******

Home Department.

The note of the Development Department on page 1-2 ante may be perused. This case has been sent to this department with reference to 'Z' on page 2 ante. No remarks seem called for in this department. May be passed on to Legal.

Sd. **********

Legal Department.

The draft suggested at page 4 c.f. practically makes the Registrar a judge in regard to the amount due to the usufructuary mortgagee and also in regard to any other questions which may be in dispute between them. It is not the intention to take away the right of a Civil Court to question the decision of the Registrar. In any case, the provision seems to be a very undesirable one. The proper forum for the decision- even a preliminary decision- of a dispute between private parties is the Civil Court and not an authority like the "Registrar" who will include Deputy and even Sub-Deputy Registrars. After all, the land mortgage bank may well make a deposit of the amount claimed to be payable under the usufructuary mortgage in the Civil Court under section 83 of the Transfer of Property Act and where such a deposit is made, the mortgagee will become liable to account for his receipts from the mortgaged property from the earliest time when he could take the deposit out of Court- see section 76(i) of the Transfer of Property Act. This is all that Development want to provide for.

I clear whether such a result is intended possibly it is not

The utmost that can be said to be really necessary in the present case is a provision that a tender of the mortgage money made by a land mortgage bank should have the same legal consequences as a deposit of the amount made under section 83. It should be made clear however that the amount tendered is the proper amount due to the mortgagee under the mortgage.

The question as to what the correct amount due to

a mortgagee is, is oftentimes extraordinarily difficult and even experienced judicial officers frequently get puzzled. Such questions cannot be dealt with by any officer of the Cooperative Department. Satisfactory decisions can be given only in a proper Court which has the advantage of hearing counsel. I therefore strongly support the recommendation of H.S. that all that is necessary in the Acts is to provide that a tender of the mortgage money by a land mortgage bank should have the same legal consequences as a deposit under section 83 of the Transfer of Property Act.

Sd. xxxxxx

Development Department.

To Assistant Secretary.

Notes from page 1 above may be perused. The views of the Legal Department at pages 3-5 above may be put to the Registrar of Cooperative Society and his remaks elicited. Subject to orders, a draft O.M. to the Registrar is submitted for approval.

Sd. *******

Issued as Memo No.20390 BIII/48-2 dated 30-3-48.

From the Registrar of Cooperative Society, Letter No. Rc. 35343/47-J dated 24-8-1948.

Please see the Office Memo at page 5-6 c.f. and the Registrar's reply with enclosure at page 7-9 c.f. has commended a modified amendment to section 29 of the Madras Cooperative Land Mortgage Banks Act, 1934, proposed by the Cooperative Land Mortgage Bank. This amendment tests the Civil Courts with the necessary powers instead of the Registrar under the previous amendment. This Department may agree/~~in~~ with / the Registrar that the Land Mortgage Banks Act may be amended as at A on page 9 c.f.

The file may be sent to Legal for further remarks.

Sd. *******

Legal Department.

Under section 60 of the Transfer of Property Act, 1882 a mortgagor is entitled, at any time after the principal money becomes due and on payment or tender of the mortgage money, to require the mortgagee to deliver possession of the mortgage property. The new section 29-B of the Madras Co-operative Land Mortgage Banks Act, 1934, suggested by the Registrar in his letter at page 9 c.f. proposes to make that right of the mortgagor enforceable even at the instance of the bank in whose favour a subsequent mortgage is executed by the mortgagor for payment of his prior debts. To that extent the principle of the new section 29B will be unobjectionable. But the section goes a step further. It enables the bank to enforce the right in question by a mere application, whereas, under section 60 of the Transfer of Property Act, for the enforcement of that very right even a mortgagor has to resort to a regular suit for redemption.

It will be difficult to justify such a preferential treatment of the bank.

By merely calling the p-roceeding an application instead of a suit, the disposal is not likely to be very materially quickened as all the disputes would have to be ~~xxxxx~~ threshed out; Government will merely lose the Court-fees.

Sd. *****

To A.S.

The views of the Legal Department at page 6 above may be communicated to the Registrar of Cooperative Society and his remarks invited. Subject to orders, a draft O.M. is submitted for approval.

Sd. *****

(Issued as O.M. No.20390 BIII/48-5 dated 29-9-48)
(From the Registrar of Cooperative Society R.C. No.35343/47-J dated 13-12-1948.

Please see the letter from the Registrar of Co-operative Society enclosing the resolution passed by the Board of Directors of the Madras Cooperative Central Land Mortgage Bank at the meeting held on 26-7-1948 on page 13-15 c.f. It has been resolved that the proposed amendment need not be proceeded with. The Registrar has stated that the matter may be dropped. The papers may be recorded. A draft order is submitted on page 16 c.f. for approval.

Sd. ******
Issued as G.O. No.Ms. 6377 Development dated 27-12-48.

/True copy/

Superintendent,
Madras Record Office.

SD/ 7-8-1953.